

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
License No. 466493 and
MERCHANT MARINER'S DOCUMENT NO. Z-650732 D1
Issued to: Marion C.N. WELLS

DECISION OF THE VICE COMMANDANT
UNITED STATES COAST GUARD

2160

Marion C.N. WELLS

This appeal has been taken in accordance with 46 U.S.C. 239(g) and 46 CFR 5.30-1.

By order dated 19 May 1978, an Administrative Law Judge of the United States Coast Guard at New York, New York, after a hearing at Philadelphia, Pennsylvania, on 14 November, 7 December, and 28 December 1977, and 13 February and 19 April 1978, suspended the captioned documents for a period of four months and further suspended them for a period of four months on twelve month's probation upon finding him guilty of misconduct. The two specifications of the charge of misconduct found proved allege: (1) that Appellant, while serving as third mate aboard SS OVERSEAS VALDEZ, under authority of the captioned documents, did, on 9 November 1977, while the vessel was anchored in the Delaware Bay off Lewis, Delaware, wrongfully strike with his fist Thurman Young, able seaman, while in the vessel's chart room at approximately 0330 from which a fight was precipitated; and (2) that Appellant while serving as aforesaid on 9 November 1977, did wrongfully fail to obey the lawful order of the Master, Jay D. Bolton, by continuing to fight with Thurman Young after the Master had ordered him to stop fighting.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and specifications.

The Investigating Officer introduced into evidence the testimony of three witnesses, two documents, one photo, and, upon stipulation, on deposition.

In defense, Appellant introduced into evidence the testimony of two witnesses, his own included, and, in mitigation, two letters.

Subsequent to the hearing, the Administrative Law Judge entered a written decision in which he concluded that the charge and specifications as alleged had been proved. He then entered an

order of outright suspension for a period of four months and further suspension for a period of four months on twelve months' probation.

The decision was served on 26 May 1978. Appeal was timely filed on 12 June 1978, and perfected on 29 September 1978.

FINDINGS OF FACT

On 9 November 1977, Appellant was serving under authority of his duly issued Coast Guard license and merchant mariner's document as third mate on board SS OVERSEAS VALDEZ (hereinafter VALDEZ), anchored in the Delaware Bay off Lewis, Delaware. The previous evening, at approximately 1900, Appellant and several other members of the crew, including an able bodied seaman named Thurman T. Young, departed on authorized liberty aboard a launch. While ashore, Appellant and Young, in separate parties, each legally consumed intoxicating beverages, but neither became incapacitated. A small bus was scheduled to retrieve everyone at a prearranged time and place for return to the launch and VALDEZ.

Young and one other member of the crew did not appear as arranged, but instead remained in a restaurant nearby. At the insistence of another member of the crew, the bus was driven to the restaurant where that crew member attempted to persuade Young to board the bus. Young walked out to the bus where Appellant, using profanity, told him to get aboard the bus. Instead, Young slammed the door of the bus and, with an obscene remark, stated his disdain for the vessel. The bus then departed.

During the trip to the launch, Appellant told the crew member who had tried to persuade Young to return with them that he (Appellant) "was going to teach him [Young] a lesson." At approximately 2300, those who had returned on the bus and the launch, including Appellant, reached VALDEZ. Upon coming aboard, Appellant mentioned to the AB standing the gangway watch that he had trouble ashore with Young and that the watchstander should tell Young when he came aboard "to watch himself or he [Appellant] would get him." At about 2345, Appellant relieved another officer on the bridge as officer of the deck.

Young returned to VALDEZ at approximately 0300. Upon being advised of Appellant's statement to the gangway watchstander, Young walked to the bridge. Once there, Young asked Appellant what the trouble was. Appellant approached Young and struck the latter, causing him to fall. A brief struggle ensued. Appellant grasped a length of pipe, notched at one end and used as a "dogging wrench," and gestured with it in a threatening manner. He then pursued Young down an outside ladder. Both shouted and cursed each

other, Young more loudly than Appellant. After both reached the bottom of the ladder the noise woke the Master, whose cabin was a located there. The Master repeatedly ordered both to stop fighting, but neither obeyed him. The Master eventually was able to take the pipe from Appellant. Both men finally separated, but, after Young pushed Appellant, again became involved in a scuffle. Appellant both punched and kicked Young, even after the latter had fallen to the deck. Again the Master stopped the fighting and ordered Appellant back to the bridge and Young to go below. Ultimately, the Master discharged both "for cause."

BASIS OF APPEAL

This appeal has been taken from the decision and order of the Administrative Law Judge. Appellant has filed a list of nineteen separate "exceptions" and a separate brief. In essence, he contends that the Administrative Law Judge erred in not believing Appellant's testimony as to the events in question.

APPEARANCE: Bank, Minehart, and D'Angelo, Philadelphia, Pennsylvania, by Melvin Alan Bank, Esq.

OPINION

Before addressing Appellant's contention that the Administrative Law Judge erred by not believing Appellant's version of events, two minor items need to be addressed.

Without directly arguing the point, Appellant has "noted" that "events which occurred during shore leave were so remote in time from the altercation on the bridge of the vessel some four and one half hours later that they cannot have had any direct effect on what occurred at 0330 during [Appellant's] watch." The Administrative Law Judge properly admitted evidence of these events. It is clear from the record that testimony as to these events ashore was closely enough related to the later altercation to be both relevant and material. The altercation on VALDEZ did not occur in vacuo, but instead, was simply the culmination of an entire evening's experiences. Moreover, motive normally is not properly at issue where the alleged perpetrator of violence is known because it is irrelevant to know why he did what he did. Here, however, it was proper for the Administrative Law Judge to look to Appellant's motive or lack of it, because, at least as to the events occurring on the bridge of VALDEZ, the Administrative Law Judge was faced with two highly contradictory versions from the participants themselves. In these circumstances, knowledge of motive may provide the Administrative Law Judge with additional insight in his determination of credibility. See, Decision on Appeal No. 1764.

Appellant states that Young "had no authority to visit" the bridge that evening. It will suffice for me to observe that not only is there no evidence that Young needed any specific "authority" to take this action, but the only evidence of record (from the deposition of the gangway watchstander) is that "[a] anyone can go [to the bridge] at any time when we are not maneuvering."

Appellant's primary argument is that the Administrative Law Judge erred by not resolving discrepancies between his testimony and that of other witnesses in his favor. The responsibility for determining the credibility of witnesses and the weight, if any, to accord the testimony of any witness is properly the responsibility of the Administrative Law Judge. Decision on Appeal No. 2019, 2030, 2047. "His determination will be upheld absent a demonstration that they are arbitrary and capricious." Decision on Appeal No. 2097. The Administrative Law Judge here has not relied on evidence intrinsically inconsistent or inherently unbelievable. The findings he has made with regard to both specifications of the charge of misconduct are supported by evidence of a reliable and probative character. I shall not disturb them.

ORDER

The order of the Administrative Law Judge, dated at New York, New York, on 19 May 1978, is AFFIRMED.

R.H. SCARBOROUGH
VICE COMMANDANT

Signed at Washington D.C., this 6th day of Sep 1979.

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